IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1269 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKLAL MOHANLAL

Versus

EXECUTIVE ENGINEER

Appearance:

1. First Appeal No. 1269 of 2003
MR NITIN M AMIN for appellant No. 1
MR KT DAVE, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

The appellant (original claimant) has filed this

appeal under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act') read with Section 96 of the Code of Civil Procedure, against the judgment and award dated 7th August 2000 passed by the learned Extra Assistant Judge, Mehsana in Land Acquisition Reference No.1580 of 1994. By the said judgment, the learned Judge partly allowed the reference by directing the respondent to pay additional compensation to the claimant at the rate of Rs.20.40 ps. per sq.mtr. over and above the compensation already awarded by the Special Land Acquisition Officer. The learned Judge has also granted the available statutory benefits to the appelant-claimant.

2. From the record of the case, it appears that the land of the appellant - claimant situated at village Serisa, Taluka Kalol, District Mehsana was acquired for the purpose of construction of Narmada main Canal by notification under Section 4(1) of the Act, published in the Government Gazette on 28.5.1990. The subsequent notification under Section 6 of the Act was published in the Government Gazette on 14.11.1990. After following the due procedure laid down under the Act, the Special Land Acquisition Officer, Narmada Canal Project, passed an award on 11.11.1992 in Land Acquisition Case No. 9 of 1990, awarding Rs.3.60 ps. per sq.mtr. as the compensation for acquired lands.

The appellant-claimant, being aggrieved by the amount of award of the Special Land Acquisition Officer, by way of reference under Section 18 of the Act, approached the Reference Court. As stated above, the Reference Court, passed the impugned award which is the subject matter of the present appeal.

3. Learned Counsel Mr.Amin for the appellant claimant submits that the Reference Court committed an error in not relying upon the earlier judicial awards vide Exhs.13 to 15. In the submission of the learned Counsel, the said earlier three judicial awards are of the same village and the fertility, nature and situation of the land is the same as that of the land of the present appellant, acquired by the respondent wherein reference Court awarded compensation at Rs.48/- per sq.mtr. Learned AGP Mr.K.T.Dave, on the other hand, supported the judgment of the Reference Court.

4. We have gone through the evidence on record and the reasoning of the Reference Court. In the present case, claimant Rasiklal Mohanlal Kalal has entered the box. His evidence is recorded at Exh.10. He has

produced the judgment of the previous awards delivered by the very Reference Court at Exhs.13, 14 and 15 wherein the Reference Court has awarded compensation in all Rs.48/- per sq.mtr. It is to be noted that the previous awards are for acquisition of the lands with respect to the same village by the same acquiring body and for the same purpose, viz. construction of Narmada Canal. As far as Exhs.13 and 14 are concerned, the notification under Section 4 of the Act was issued on 19.5.1990 while in the case of Exh.15, the notification under Section 4 was issued on 19.7.1990. In the case on hand, notification under Section 4 was issued on 28.5.1990. Thus notification under Section 4 was issued almost at the same time. The Reference Court, under the circumstances, ought to have accepted the previous awards for determining the compensation of the present case. Even though it was specifically submitted before the learned Judge that the previous awards are required to be taken into account for fixing the amount of compensation as the same are relevant for determining the price of the land, surprisingly, the Reference Court has not accepted the said submission by observing that the previous awards are not binding on him and secondly the High Court has not finally decided the appeals preferred against those awards at Exhs.13, 14 and 15. In our opinion, the reasonings are showing disrespect to judicial verdict and against propriety.

5. Learned Counsel Mr.Amin made a statement at the Bar that the State has preferred appeal being First Appeals Nos. 883 to 894 of 2001 against the judgment and award in L.A.R. No. 1406 to 1414 of 1995, 1578, 1579 and 1581 of 1994 against Exh.13 and this Court dismissed those appeals on 19.12.2000. Likewise, L.A.R. Nos 3285 to 3295 of 1993 are the subject matter of Exh.14 challenged by the State in appeal being First Appeals Nos.1100 to 1111 of 2000 and the same was also dismissed on 19.12.2000. Similarly, Exh.15 was the subject matter of L.A.R. No. 3165 to 3173 of 1993 was challenged in the First Appeal Nos.570 to 578 of 2000, which also came to be dismissed by this Court on 19.12.2000. Thus, this Court has dismissed all the appeals filed by the State whereby the Reference Court awarded Rs.48/- per sq.mtr. for acquiring the lands of village Serisa and the price determined at Rs.48/- per sq.mtr. has become final. In that view of the matter, we see no difficulty in allowing this appeal by awarding Rs.48/- per sq.mtr. being the compensation of the land belonging to the appellant, acquired by the respondent.

6. Learned Counsel Mr.Amin has further submitted

that the Reference Court has committed a grave error in not awarding interest on solatium and the benefit of 12% price difference on the amount which was awarded under Section 23(2) of the Act and under Section 23(1-A) of the Act. He has drawn our attention to the relevant portion of the judgment of the trial Court, wherein the said benefits are denied to the claimants. In the submission of Mr.Amin, the Apex Court has, in a recent decision rendered in the case of Sundar v. Union of India, reported in 2001(3) GLH 446, laid down a law requiring the payment of interest on the solatium and the monetary benefits made available to the claimants under Section 23(2) and under Section 23(1-A) of the Act. The Apex Court has held that the expression "awarded amount" means all the amount of compensation worked out under Section 23 of the Act. It has clarified the position further by saying that:

> "We make it clear that the compensation awarded include not only the total sum arrived at as per sub-section (1) of S.23 but the remaining sub-sections thereof as well. It is thus clear from S.34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in S.23 including all the sub-sections thereof."

In view of what has been laid down by the Apex Court in aforesaid decision, the conclusion reached by the Reference Court is required to be set aside and the appellant is required to be awarded interest at the rate of 9% per annum for the first year and 15% per annum for the subsequent years, on the amount awarded under Sections 23(2) and 23(1-A) of the Act. The appellant has claimed additional amount of Rs.50/- per sq.mtr. It may be noted here that even though the claimant has produced earlier three judicial awards of comparable lands awarding Rs.48/- per sq.mtr., the Reference Court has awarded only Rs.20..40 ps. only and that the appeals filed by the State, as stated earlier, came to be dismissed. Therefore, in view of the foregoing discussion, a total amount of Rs.48/- per sq.mtr. can be awarded as compensation to the appellant. We, therefore, direct the respondent to pay to the appellant compensation of additional amount of Rs.48/- per sq.mtr. together with all the permissible benefits available to the appellant under the Act including the amounts awardable under Section 23(1-A) and Section 23(2) of the Act together interest on the amount under Section 23(1-A) and under Section 23(2) of the Act, at the rate of 9% for the first year and 15% for the subsequent years till the

amount is deposited before the Reference Court.

The respondent are directed to deposit the additional amount as early as possible before the Reference Court.

In the result, the appeal is allowed. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)
Sreeram.